IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO. 51 OF 2004

The Commissioner of Central
Excise (Appeals), Thane- I. ... Appellant.

V/s.

Heena Metal Pvt.Ltd. ... Respondent.

A.S.Rao for the applicant.

Ms.Shilpa Balani for the respondent.

CORAM : V.C.DAGA AND J.P.DEVADHAR, JJ.

DATED : 15th April 2005.

P.C. :

. An appeal was filed before the Customs, Excise and Service Tax Appellate Tribunal ("Tribunal" for short) arising out of order-in-original dated 28th April, 2003 passed by the Commissioner of Central Excise, Thane-I. The Tribunal allowed the appeal holding that the order passed by the Commissioner of Central Excise, Thane-I is without jurisdiction. This order of the Tribunal is a subject matter of challenge in the present appeal filed under section 35G(1) of the Central Excise Act, 1944 ("Act" for short).

2. The learned counsel appearing for the respondent raised preliminary objection to contend that the appeal is not maintainable under section

35G of the Act in view of the fact that the appeal filed before the Tribunal arose out of order relating, amongst other things, to the determination of question having relation to the rate of duty and excise and value of the goods for the purpose of assessment. According to her, against the said order appeal would lie under section 35L of the Act. Having considered the submission made, we agree with the preliminary objection raised by the respondent and, thus, hold that it needs to be sustained.

3. Appeal is, accordingly, dismissed as not maintainable with no order as to costs.

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